

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

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| <b>JEROME STURDIVANT and<br/>ALISON SAWCHAK,<br/>Plaintiffs</b>      | :                   |   |
| <b>v.</b>  | :                   | <b>CIVIL ACTION NO. 3:21-162<br/><br/>(JUDGE MANNION)</b> |
| <b>AGT. K. RIVERA-ITHIER,<br/><u>et al.</u>,<br/><br/>Defendants</b> | :<br><br>:<br><br>: |   |

**ORDER**

Pending before the court is the report of Magistrate Judge Schwab, which recommends that the plaintiffs' complaint, (Doc. 1), be dismissed without further leave to amend pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) and 28 U.S.C. §1915A for failure to state a claim. (Doc. 11). No objections have been filed to the report and recommendation and, the time within which they were due has expired. Upon review, the report will be adopted in its entirety.

By way of relevant background, Judge Schwab granted plaintiffs Sturdivant's and Sawchak's applications to proceed *in forma pauperis*, (Doc. 9), and then initially screened the plaintiffs' *pro se* complaint, and determined that their complaint failed to state a claim under Rules 8, 10, and 12(b)(6) of the Federal Rules of Civil Procedure. (Doc. 10). On April 22, 2021, Judge

Schwab issued an Order detailing the many deficiencies of plaintiffs' original complaint as well as instructing the plaintiffs to conform their complaint to the pleading requirements of Fed.R.Civ.P. 8 and 10. The judge also granted the plaintiffs leave to file an amended complaint within 28 days. Further, the judge forewarned plaintiffs that if they did not file an amended complaint as directed, she would recommend that their case be dismissed. (Id.). Nonetheless, the plaintiffs failed to file their amended pleading as directed by the court. Nor have plaintiffs requested an extension of time to file their amended complaint. In fact, plaintiffs have not filed any document in their case since March 2021.

By way of the instant report, Judge Schwab has determined that, in addition to the failure of plaintiffs to abide by her Order to file an amended complaint, their original complaint fails to properly state any cognizable claim.<sup>1</sup> As such, Judge Schwab recommends that the plaintiffs' complaint be dismissed for failure to state a claim, and she recommends that any such dismissal be without further leave to amend since the plaintiffs failed to cure

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<sup>1</sup>Judge Schwab's report also specifies many other violations of the Rules with respect to plaintiffs' complaint which the court does not repeat herein.

the deficiencies of their original complaint after having been provided a previous opportunity to do so.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D. Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

Upon review of Judge Schwab’s report and recommendation, the court finds no clear error of record. Moreover, the court agrees with the sound reasoning which led Judge Schwab to her conclusions. As such, the court will adopt the report and recommendation in its entirety.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

**(1)** The report and recommendation of Judge Schwab **(Doc. 11)** is **ADOPTED IN ITS ENTIRETY** as the decision of the court.

(2) The plaintiffs' complaint, (Doc. 1), is **DISMISSED WITH PREJUDICE** for failure to state a claim under Fed.R.Civ.P. 8(a) and 12(b)(6).

(3) The Clerk of Court is directed to **CLOSE THIS CASE**.

*S/ Malachy E. Mannion*

**MALACHY E. MANNION**

**United States District Judge**

**DATE: July 19, 2021**

21-162-01